

## SENATE BILL NO. 143

INTRODUCED BY LAIBLE

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "~~AN ACT AUTHORIZING THE USE OF THE ORPHAN SHARE FUND FOR INVESTIGATIONS AND FEASIBILITY STUDIES FOR RELEASES AT FACILITIES FOR WHICH A STATE AGENCY MAY BE LIABLE UNDER THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; PROVIDING FOR CONTINGENT TRANSFERS AND AN APPROPRIATION FROM THE ORPHAN SHARE STATE SPECIAL REVENUE ACCOUNT TO THE HAZARDOUS WASTE/CERCLA SPECIAL REVENUE ACCOUNT AND TO THE ENVIRONMENTAL QUALITY PROTECTION FUND ACCOUNT; PROVIDING FOR REPAYMENT OF CONTINGENT FUND TRANSFERS; AMENDING SECTIONS 75-10-704 AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 75-10-704, MCA, is amended to read:

**"75-10-704. Environmental quality protection fund.** (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) Except as provided in subsection (9), the fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

1 (a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs  
2 recovered pursuant to 75-10-715;

3 (b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant  
4 to 75-10-711(5);

5 (c) funds appropriated to the fund by the legislature;

6 (d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

7 (e) funds received from the interest income of the fund;

8 (f) funds received from settlements pursuant to 75-10-719(7); and

9 (g) funds received from the interest paid pursuant to 75-10-722.

10 (5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and  
11 additional money remains in the fund, the department shall seek additional authority to spend money from the  
12 fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

13 (6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the  
14 department may apply to the governor for a grant from the environmental contingency account established  
15 pursuant to 75-1-1101.

16 (7) (a) There is established a state special revenue account for all funds donated or granted from private  
17 parties to remediate a specific release at a specific facility. There must be deposited into the account the interest  
18 income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this  
19 account.

20 (b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated  
21 in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to  
22 remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

23 (c) If the balance of the fund created in this subsection (7), as determined by the department pursuant  
24 to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial  
25 contribution, all donated or granted funds, including any interest on those donated or granted funds, must be  
26 returned to the grantor.

27 (d) If the balance for a specific project is determined by the department to be sufficient to remediate the  
28 facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial  
29 action, using the funds donated under this subsection (7).

30 (e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions

1 of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to  
2 obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial  
3 action, and to recover costs and damages incurred by the state.

4 (f) The department shall expend the funds in a manner that maximizes the application of the funds to  
5 physically remediating the specific release.

6 (8) (a) A person may donate in-kind services to remediate a specific release at a specific facility  
7 pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result  
8 of the contribution of in-kind services.

9 (b) A person who donates in-kind services with respect to remediating a specific release at a specific  
10 facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that  
11 results from the release or threatened release, including but not limited to claims for indemnification or  
12 contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or  
13 economic loss.

14 (c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is  
15 caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes  
16 intentional misconduct.

17 (d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or  
18 threatened release of a hazardous or deleterious substance, the person may not avoid that liability or  
19 responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of  
20 subsection (7) and this subsection (8).

21 (e) Any donated in-kind services that are employed as part of a remedial action pursuant to this  
22 subsection (8) must be approved by the department as appropriate remedial action.

23 (9) (a) If funds are transferred from the orphan share fund to the environmental quality protection fund  
24 pursuant to ~~75-10-743(10)~~ 75-10-743(9), the department shall, subject to the limitation in subsection (9)(b) of  
25 this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year,  
26 transfer from the environmental quality protection fund to the orphan share fund the unencumbered amount  
27 remaining in the environmental quality protection fund at the end of the fiscal year that is in excess of the amount  
28 appropriated for the next fiscal year from the environmental quality protection fund.

29 (b) The total transferred pursuant to subsection (9)(a) may not exceed the total amount transferred to  
30 the environmental quality protection fund pursuant to ~~75-10-743(10)~~ 75-10-743(9)."

1  
2       **Section 2.** Section 75-10-743, MCA, is amended to read:

3       **"75-10-743. Orphan share state special revenue account -- reimbursement of claims -- payment**  
4 **of department costs.** (1) There is an orphan share account in the state special revenue fund established in  
5 17-2-102 that is to be administered by the department. Money in the account is available to the department by  
6 appropriation and, ~~except as provided in subsections~~ **SUBSECTION (9) and (10)**, must be used to reimburse  
7 remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and, ~~except as provided in subsection~~  
8 ~~(10)~~, to pay costs incurred by the department in defending the orphan share.

9       (2) There must be deposited in the orphan share account:

10       (a) all penalties assessed pursuant to 75-10-750(12);

11       (b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

12       (c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided  
13 for in 15-38-106;

14       (d) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

15       (e) unencumbered funds remaining in the abandoned mines state special revenue account;

16       (f) interest income on the account;

17       (g) funds received from settlements pursuant to 75-10-719(7); and

18       (h) funds received from reimbursement of the department's orphan share defense costs pursuant to  
19 subsection (6).

20       (3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently  
21 in the order in which they were received by the department. If the orphan share fund does not contain sufficient  
22 money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan  
23 share fund, the department, and the state are not liable for making any reimbursement for the costs. The  
24 department and the state are not liable for any penalties if the orphan share fund does not contain sufficient  
25 money to reimburse claims, and interest may not accrue on outstanding claims.

26       (4) Except as provided in subsection ~~(8)~~ **(7)**, claims may not be submitted and remedial action costs  
27 may not be reimbursed from the orphan share fund until all remedial actions, except for operation and  
28 maintenance, are completed at a facility.

29       (5) Reimbursement from the orphan share fund must be limited to actual documented remedial action  
30 costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for

1 attorney fees, legal costs, or operation and maintenance costs.

2 (6) (a) The department's costs incurred in defending the orphan share must be paid by the persons  
3 participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The  
4 orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share  
5 in proportion to the orphan share's allocated share, as follows:

6 (i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending  
7 the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the  
8 orphan share.

9 (ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation  
10 under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs  
11 incurred in defending the orphan share in proportion to each person's allocated share of liability.

12 (b) A person who pays the orphan share's proportional share of costs has a claim against the orphan  
13 share fund and must be reimbursed as provided in subsection (3).

14 ~~(7) If sufficient money remains in the orphan share fund on June 29, 2003, \$999,000 must be~~  
15 ~~transferred to the general fund.~~

16 ~~(8)(7)~~ If the lead liable person under 75-10-746 presents evidence to the department that the person  
17 cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will  
18 cause undue financial hardship on the person, the department may allow the submission of claims and may  
19 reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early  
20 reimbursement unless the person is in substantial compliance with all department-approved remedial action  
21 plans.

22 ~~(9)(8)~~ A person participating in the allocation process who received funds under the mixed funding pilot  
23 program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive  
24 reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot  
25 program that are later attributed to the orphan share under the allocation process.

26 ~~(10)(9)~~ For the biennium beginning July 1, ~~2003~~ 2005, and subject to the provisions of ~~section 4, Chapter~~  
27 ~~199, Laws of 2003~~ [section 3], the department may transfer funds from the orphan share fund to the  
28 environmental quality protection fund established in 75-10-704, the hazardous waste/CERCLA account  
29 established in 75-10-621, or both. The total amount transferred pursuant to this subsection may not exceed  
30 \$600,000.

~~(10) (A) For the biennium beginning July 1, 2005, up to \$2 million may be appropriated from the orphan share fund to the department in [House Bill No. 2] to pay for the department's costs for investigations and preparation of feasibility studies for OF releases at facilities for which a state agency may be liable under Title 75, chapter 10, part 7.~~

~~(B) THE MONEY SPENT PURSUANT TO SUBSECTION (10)(A) MUST BE CREDITED AGAINST THE AMOUNT OWED BY THE STATE AGENCY IN A JUDGMENT OR SETTLEMENT AGREEMENT FOR PAYMENT OF THE REMEDIAL ACTION COSTS AT THE FACILITY FOR WHICH THE MONEY WAS SPENT."~~

**NEW SECTION. Section 3. Contingent transfer of orphan share funds -- appropriation.** (1) Subject to the limitation in subsection (3), there is transferred from the orphan share account established in 75-10-743 to the environmental quality protection fund established in 75-10-704 an amount not to exceed \$600,000 during the biennium beginning July 1, 2005, if the expenditures from the environmental quality fund exceed revenue available to the fund. The money transferred pursuant to this subsection may be appropriated to the department of environmental quality subject to the appropriation from the environmental quality protection fund in [House Bill No. 2]. The total expenditures in each fiscal year of the biennium may not exceed the appropriation made in [House Bill No. 2].

(2) Subject to the limitation in subsection (3), there is transferred from the orphan share account established in 75-10-743 to the hazardous waste/CERCLA special revenue account established in 75-10-621 an amount not to exceed \$600,000 during the biennium beginning July 1, 2005, if the expenditures from the hazardous waste/CERCLA account exceed revenue available to the account. The money transferred pursuant to this subsection may be appropriated to the department of environmental quality subject to the appropriation from the hazardous waste/CERCLA account in [House Bill No. 2]. The total expenditures in each fiscal year of the biennium may not exceed the appropriation made in [House Bill No. 2].

(3) The total of the amounts transferred and appropriated pursuant to subsections (1) and (2) may not exceed \$600,000.

~~**NEW SECTION. SECTION 4. CONTINGENT VOIDNESS.** IF HOUSE BILL NO. 2 IS PASSED AND APPROVED AND CONTAINS AN APPROPRIATION FROM THE GENERAL FUND TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PAY ITS COSTS FOR INVESTIGATIONS AND PREPARATION OF FEASIBILITY STUDIES OF RELEASES AT THE KALISPELL POLE AND TIMBER, RELIANCE REFINERY, AND YALE REFINERY STATE SUPERFUND SITES, THEN [SECTION 2(10)] IS VOID.~~

3 - END -